

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALEM LOPEZ,	§
	§ Nos. 259, 2008 and
Defendant Below-	§ 4, 2009
Appellant,	§ CONSOLIDATED
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID No. 0404018958
Plaintiff Below-	§
Appellee.	§

Submitted: April 13, 2009

Decided: May 13, 2009

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 13th day of May 2009, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, Alem Lopez, filed an appeal from the Superior Court’s December 19, 2008 order following remand, which denied his second motion for postconviction relief pursuant to Superior Court Criminal Rule 61.¹ We find no merit to the appeal. Accordingly, we affirm.

¹ While the Superior Court originally considered, and denied, Lopez’ claims of ineffective assistance of counsel on the merits, it summarily denied the remainder of his postconviction claims as time-barred under Rule 61(i) (1). In its October 22, 2008 Order on appeal, this Court held that those claims were not time-barred and remanded the matter to the Superior Court for consideration of all of Lopez’ claims that were not previously addressed on the merits.

(2) In November 2004, Lopez was charged with Murder in the First Degree, Attempted Murder in the First Degree, Possession of a Deadly Weapon by a Person Prohibited, and two counts of Possession of a Firearm During the Commission of a Felony. He faced a sentence of life imprisonment. In September 2006, Lopez pleaded guilty to a single count of Manslaughter and a single count of Possession of a Firearm During the Commission of a Felony. On the manslaughter conviction, he was sentenced to twenty-five years of Level V incarceration, to be suspended after twenty-three years for decreasing levels of supervision. On the weapon conviction, he was sentenced to ten years of Level V incarceration. Lopez did not file a direct appeal.

(3) At his sentencing hearing, Lopez unsuccessfully moved to withdraw his guilty plea. His subsequent motion for reargument also was unsuccessful. Lopez did not file an appeal from the Superior Court's denial of his motion to withdraw his guilty plea.

(4) In this appeal from the Superior Court's December 19, 2008 denial of his second postconviction motion, Lopez claims that a) his guilty plea was involuntary; b) the Superior Court should have held an evidentiary hearing regarding his appointed trial counsel's conflict of interest; c) the Superior Court should have postponed his trial so he could retain private

counsel; d) the Superior Court improperly questioned him during his plea hearing; and e) his counsel provided ineffective assistance.

(5) In considering a motion for postconviction relief, the Superior Court first must ascertain if any of the procedural bars of Rule 61 applies.² If a procedural bar is found to exist, the Superior Court should refrain from considering the merits of any barred claims.³ The Superior Court also should refrain from addressing the merits of claims that are conclusory and unsubstantiated.⁴

(6) In this case, Lopez' first claim that his guilty plea was involuntary is procedurally barred as formerly adjudicated.⁵ Moreover, Lopez has failed to demonstrate that reconsideration of that claim is warranted in the interest of justice.⁶ We note that, while the transcript of Lopez' guilty plea colloquy reflects that he initially was reluctant to accept the State's plea bargain, the Superior Court judge afforded him extra time to consult with his counsel. Ultimately, having consulted with his counsel, Lopez decided that it was in his best interest to accept the State's plea

² *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

³ *Id.*

⁴ *Id.* at 555.

⁵ Super. Ct. Crim. R. 61(i) (4).

⁶ *Id.*

bargain. The transcript clearly reflects that his guilty plea was knowing and voluntary. We, therefore, conclude that Lopez' first claim is without merit.

(7) Lopez' next two claims are that the Superior Court should have held an evidentiary hearing regarding his counsel's conflict of interest and should have postponed his trial so that he could retain private counsel. Under Delaware law, a voluntary guilty plea constitutes a waiver of any alleged errors or defects occurring prior to the entry of the plea.⁷ Because Lopez' guilty plea was voluntary, we conclude that those claims are waived and, therefore, must be denied.

(8) Lopez' next claim is that the Superior Court judge improperly questioned him at the plea hearing. Under Superior Court Criminal Rule 11, a Superior Court judge is required to engage in a colloquy on the record with any defendant who enters a plea of guilty in order to insure that the defendant enters the plea fully aware of the nature of the charges against him and the consequences of entering the plea.⁸ The transcript of Lopez' plea colloquy reveals no error or abuse of discretion on the part of the Superior Court judge in this respect. Therefore, we conclude that this claim also is without merit.

⁷ *Downer v. State*, 543 A.2d 309, 311-12 (Del. 1988).

⁸ *State v. Brown*, 250 A.2d 503, 505 (Del. 1969).

(9) Lopez' fifth, and final, claim is that his trial counsel provided ineffective assistance. In order to prevail on a claim of ineffective assistance of counsel within the context of a voluntary guilty plea, the defendant must demonstrate that there is a reasonable probability that, but for his counsel's errors, he would not have pleaded guilty, but would have insisted on proceeding to trial.⁹ The transcript of Lopez' plea colloquy reflects that he had thoroughly discussed his plea with his counsel and was satisfied with the advice he was given regarding the plea. In the absence of clear and convincing evidence to the contrary, Lopez is bound by those representations.¹⁰ Moreover, Lopez received a clear benefit by entering a guilty plea. If he had proceeded to trial, he risked a sentence of life imprisonment. As such, we conclude that this claim, too, is without merit.¹¹

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

⁹ *Albury v. State*, 551 A.2d 53, 60 (Del. 1988).

¹⁰ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

¹¹ To the extent that Lopez' ineffectiveness claims involve conduct on the part of his counsel that preceded his voluntary guilty plea, those claims have been waived and, therefore, must be denied. *Downer v. State*, 543 A.2d at 311-12.